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**UTAH LABOR COMMISSION**

**SCOTT WINN,**

**Petitioner,**

**vs.**

**MARCONI/GTE and PACIFIC  
EMPLOYERS INSURANCE  
COMPANY,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 04-1134**

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Scott Winn asks the Utah Labor Commission to review Administrative Law Judge Marlowe's denial of permanent total disability benefits to Mr. Winn under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Winn claims benefits from Marconi/GTE and its insurance carrier, Pacific Employers Insurance Company, (hereafter referred to jointly as "Marconi") for a work injury that occurred on October 20, 2000, to his right hand. Following an evidentiary hearing, Judge Marlowe referred the medical aspects of the claim to a medical panel. After reviewing the panel's opinion, Judge Marlowe denied benefits.

In his motion for review, Mr. Winn argues he is entitled to permanent total disability benefits caused by his work injuries.

**FINDINGS OF FACT**

The Commission adopts Judge Marlowe's findings of fact. The facts relevant to the motion for review, as supplemented by the record, are as follows:

On October 20, 2000, Mr. Winn suffered an electrical burn to his right hand. Although the burn had healed by January of 2001, Mr. Winn continued to complain of numbness and pain and was later diagnosed with ulnar neuropathy secondary to the injury. On September 21, 2001, Mr. Winn was pulling on something overhead at work and felt a pop in his right hand. This was later diagnosed as tendonitis not related to his initial burn injury.

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Mr. Winn's October 20, 2000, injury reached medical stability by January 2002 and he was assigned a 4% whole person impairment (7% upper extremity impairment). No permanent restrictions were recommended. With respect to the second injury, Mr. Winn was assigned a 1% whole person impairment and permanent restrictions to the right arm of no lifting more than 25 pounds and no heavy or repetitive use. Mr. Winn has been classified to work at a medium work level.

Mr. Winn was 34 years of age at the time of the first injury. He last worked for Marconi on September 11, 2002, and was later laid off. He currently works part-time for three to four hours a day, preparing boxes for shipping. He has a high school diploma and two years of college. His previous work history included remodeling, construction, and electrical work. He reports being unable to find work at his previous rate of pay. He complains of pain, numbness and tingling in his right hand and forearm, and he currently takes Lortab for pain control.

**DISCUSSION AND CONCLUSION OF LAW**

The only issue before the Commission is whether Mr. Winn is entitled to permanent total disability benefits. Section 34A-2-413 of the Utah Workers' Compensation Act requires Mr. Winn to show that (1) he suffered a significant impairment or combination of impairments from the work accident; (2) he is permanently and totally disabled; and (3) the work accident was the direct cause of his disability. It is the second criteria—that he is permanently and totally disabled—in dispute.

Subsection 413(c) of the Act provides a four-part test for determining whether an employee is permanently and totally disabled. Under this section, Mr. Winn must show that (1) he is not gainfully employed; (2) he is limited in performing basic work activities; (3) he is unable to perform his former work; and (4) he is unable to perform other work reasonably available taking into account his age, education, past work experience, medical capacity and residual functional capacity. Judge Marlowe concluded Mr. Winn could not satisfy the last three tests.

The Commission first turns to Mr. Winn's argument that his impairments limit his ability to do basic work activities. The Commission notes that basic work activities refers to common activities shared in a wide variety of occupational settings, not just one particular position or field of positions. These activities may include an employee's ability to report to work and remain there throughout a shift or an employee's comprehension and ability to communicate, all of which are common requirements for a broad range of jobs. Mr. Winn's limitations involve his right arm, which prevent him from lifting more than 25 pounds and no heavy or repetitive use of the arm. The Commission finds that Mr. Winn has not shown that his impairments would limit his ability to do basic work activities and, in fact, he is able to work at least three to four hours a day preparing shipping boxes.

Mr. Winn next argues that his impairments prevent him from performing the essential functions of the work activities he was qualified to do until the accident. However, Mr. Winn has

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not identified any previous work activity that he is limited in performing due to his accident. Thus, the Commission finds that Mr. Winn's impairments do not limit his ability to perform his previous work activities.

Finally, Mr. Winn argues that he cannot perform other work reasonably available. However, reviewing the pertinent factors, including his age, education, work experience, and medical and functional capacity, the Commission finds Mr. Winn has not shown he cannot perform other work reasonably available. Although Mr. Winn may not be able to find work comparable to his previous rate of pay, that alone does not demonstrate that there is no other work reasonably available. The Commission concludes that Mr. Winn has not met his burden of showing that he is permanently and totally disabled and is not entitled to an award for permanent total disability benefits.

**ORDER**

The Commission affirms Judge Marlowe's decision dismissing Mr. Winn's claim. It is so ordered.

Dated this 26<sup>th</sup> day of November, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.